

Protecting Social Security Disability Act of 2014

Title I – Ensuring the Long-Term Solvency of the Disability Insurance Trust Fund

Sec. 101. Application of actuarial reduction for disabled beneficiaries who attain early retirement age.

- Requires that disabled worker beneficiaries be converted to retired worker status at the Earliest Eligibility Age.
- Any individuals who are categorized as Medical Improvement Not Expected (see below) are exempt.

Sec.102. Reviews and time-limiting of disability benefits.

- Disability Classifications. Mandates that all beneficiaries be classified as follows when they are admitted on to the rolls:
 - o Medical Improvement Expected (MIE, improvement within 1-2 years);
 - o Medical Improvement Likely (MIL, improvement within 3-5 years);
 - o Medical Improvement Possible (MIP, improvement not likely to be within 5 years, but improvement is possible); and
 - o Medical Improvement Not Expected (MINE, there is no known effective treatment). Age may not be used as a factor to categorize someone in the MINE category who otherwise would not be.
- Continuing Disability Reviews.
 - o MILs and MIPs will have mandatory full medical continuing disability reviews during the 5th year and 7th year of benefits, respectively.
 - o Any individual may be subject to an earlier review if the Commissioner of Social Security has reason to believe the individual is not under a disability, but such a review cannot be initiated on the basis of income earned under Section 301 (below).
 - o Reviews under this paragraph are in addition to, and do not substitute for, other reviews required by the Social Security Act.
 - o The standard of review will be the same as conducted for an initial determination, rather than the medical improvement standard, except that any income the individual is now earning under Section 301 (below) will not be considered.
- Time-limiting Disability Benefits for MIE Individuals.
 - o Benefits will be time-limited to 3 years for MIEs.
 - o MIEs may file a timely reapplication for benefits during the last twelve to fourteen months of their benefit period.
 - o Notwithstanding the above, a reapplication may be deemed timely if the individual can show good cause for failure to submit during the period described above and it is submitted no later than 6 months before the end of the termination month applicable.
 - o There will be no waiting period for benefits/Medicare if an individual's timely reapplication is approved.
 - o If an initial decision has not been made on a timely reapplication when the individual's benefit term ends, the individual's benefits will continue until an initial determination is made.

- If an final decision has not been made on a timely reapplication when the individual's benefit term ends, and the individual requests a hearing to review an unfavorable initial decision, the individual may request to have benefits extended until a hearing decision is made. If the individual is determined not to be disabled, any benefits paid after benefit term has ceased will be considered overpayments.
- A previous award of benefits shall have no bearing on the reapplication, and the continuing disability review rules do not apply.

Sec.103. Adjustment of age criteria for social security disability insurance medical-vocational guidelines.

- Age cannot be considered as a factor using the grids for any individual aged less than the Normal Retirement Age minus 12 years. This means every time the Normal Retirement Age is increased, so too will the age for disability purposes.
- SSA must consider the share and ages of individuals currently participating in the labor force and the number and types of jobs available in the current economy when considering vocational factors.
- Starting in two years, and every year thereafter, SSA must keep a current jobs list so examiners are considering the current economy when determining whether an individual can work any job in the national economy.

Sec.104. Mandatory collection of negotiated civil monetary penalties.

- Mandates SSA collect the penalties negotiated by the Inspector General in cases of fraud by beneficiaries.

Sec.105. Required electronic filing of wage withholding returns.

- Requires that all W-2s be submitted electronically but provides a hardship exemption for small businesses with 25 employees or less for the first five years, and then moving to 5 employees or less after that.

Title II – Program Integrity: Reforming Standards and Procedures for Disability Hearings, Medical Evidence, and Claimant Representatives

Sec.201. Elimination of reconsideration review level for an initial adverse determination of an application for disability insurance benefits.

- Removes the reconsideration review in the remaining states that still have it so cases can move quickly to a hearing before an ALJ.

Sec.202. Deadline for submission of medical evidence; exclusion of certain medical evidence.

- Closing the Record. Prevents SSA from considering evidence submitted less than 5 days before a hearing with an ALJ, and provides a “good cause” standard for failing to meet that deadline that is the same as used in federal court. In no case can evidence be submitted if it was obtained after the ALJ's decision or submitted 1 year after an ALJ's decision.
- Applicants, their representative, or a disability hearing attorney (defined in section 203 below) may request that a hearing be postponed to complete the record for no more than 30 days if it is made at least 7 days prior to the hearing date and if the party shows good

cause.

- Exclusion of Medical Evidence. Makes it clear that claimants and their representatives must submit all known, relevant medical evidence to SSA, whether the evidence is favorable or unfavorable, and requires that claimants certify to the ALJ at a hearing that they have done so. Evidence may not be considered otherwise. There is an exception for attorney-client privileged communications. It also provides clear civil and criminal penalties for the failure to follow these rules.
- Prohibits SSA from considering evidence furnished by a physician who is not licensed, has been sanctioned, or is under investigation for ethical misconduct.

Sec.203. Non-adversarial disability hearing attorneys.

- Creates a disability hearing attorney position to develop the record, represent the government in hearings where the claimant has representation, recommend on the record decisions where clearly warranted, and to refer cases to the Appeals Council if they disagree with the ALJ's grant of benefits.
- Requires the Agency to properly vet and train the staff.

Sec.204. Procedural rules for hearings.

- Requires SSA to create and publish procedural rules for hearings.
- Allows ALJs to impose certain fines and other sanctions for failure to follow these rules.

Sec.205. Prohibits attorneys who have relinquished a license to practice in the face of an ethics investigation from serving as a claimant representative.

- Any representative seeking payment for their services has an affirmative burden of certifying to SSA they meet the rules.
- Attorneys must certify to SSA they have never been disbarred or suspended from any court or relinquished a license to practice in the face of a misconduct investigation.

Sec.206. Applying judicial code of conduct to administrative law judges.

- This makes ALJs subject to the Judicial Code of Conduct.

Sec.207. Evaluating medical evidence.

- Removes the controlling weight standard given to opinion evidence provided by treating physicians.
- For any healthcare providers filling out a Residual Functional Capacity form, the claimant has to provide them with a Medical Consultant Acknowledgement Form (created by SSA) that discloses how medical evidence will be used by SSA, instructions on filling out RFC forms, and information on the legal and ethical obligations of a practitioner providing such an assessment. The practitioner must sign and certify they read and understand the contents of the form and include it with the RFC or the evidence cannot be considered by SSA. This also provides penalties for forging the certification.
- Allows ALJs to request and use Symptom Validity Tests and social media and requires SSA provide training on how to weigh such evidence.

Sec.208. Reforming fees paid to attorneys and other claimant representatives.

- Representatives must account for work performed on a case even if there is a valid fee

agreement

- SSA can no longer reimburse representatives for travel expenses.
- The IG must perform annual reviews of the highest-earning claimant representatives that look for repetitive language in their evidence, any licensing problems, and whether there is a disproportionate number of the representatives' cases being determined by a particular ALJ.
- Representatives cannot receive fees from the Equal Access to Justice Act for: (1) hearings before an ALJ; and (2) if they submitted new evidence after the hearing.

Sec.209. Strengthening the administrative law judge quality review process.

- The Division of Quality shall conduct an annual review on a sample of cases by “outlier” ALJs (those with 85% or higher approvals and 700 or more cases that year) and report to SSA on its findings.
- Any cases determined to be granted in error must have a continuing disability review within six months.

Sec.210. Permitting data matching by the Inspector General of the Social Security Administration.

- Exempts Inspectors General from the applicable Computer Matching and Privacy Protection Act of 1988 restrictions, which mandate cumbersome rules to approve agreements with other agencies to share records for investigations.

Sec.211. Accounting for Social Security Program Integrity Spending.

- Amounts made available for program integrity spending shall be in a separate account within the federal budget and funded in a separate account in the appropriations bill.

Sec.212. Use of the National Directory of New Hires.

- Mandates that SSA consult the National Directory of New Hires when determining whether an individual is making above the substantial gainful activity limits.

Title III – Providing Support For Working, Disabled Americans

Sec.301. Encouraging work through the Work Incentive Benefit System

- Removes Ticket to Work.
- Implements the Work Incentive Benefit Program created by Dr. Jagadeesh Gokhale, member of the Social Security Advisory Board. The program incentivizes disability beneficiaries to go back to work to the extent they are able by allowing them to keep more of what they earn while receiving diminished benefits. The program is different from the Benefit Offset National Demonstration (BOND) in that it uses a sliding scale (similar to the Earned Income Tax Credit) to encourage beneficiaries to maximize their earnings.
- Puts in place a reimbursement structure for state vocational rehabilitation agencies that shares the savings accrued when a beneficiary returns to work under the Work Incentive Benefit Program and thus receives a lower benefit. The share of these savings state VR agencies are entitled to will increase based on the severity of the disability, to ensure VR agencies are targeting those who need the most help.

Sec.302. Early-intervention demonstration project and study. Requires SSA to implement two projects to:

- Identify disability applicants who have not yet entered the program but who are highly likely to be approved, yet who would have some work capacity if given the appropriate supports. Directs the Commissioner to provide targeted vocational rehabilitation, as well as the possibility of health benefits and cash stipends, to selected individuals who voluntarily suspend their disability application in exchange for these supports; and
- Study the feasibility of incentives for employers to provide private disability insurance and other support services by reimbursing a portion of payroll taxes when employers can reduce their disability rates (voluntary experience rating).